APPEAL NO. 042641
FILED DECEMBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 22, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not sustain any disability.

The claimant appealed the hearing officer's decision. The file does not contain a response from the respondent (self-insured).

DECISION

Reversed and rendered.

The claimant, a corrections officer at one of the self-insured's facilities testified that on _____, during an inspection, as he was existing a supply closet, he turned or pivoted to go around the supply closet door, heard a pop and felt immediate pain in his left foot. The claimant was subsequently diagnosed as having a fracture of the fifth metatarsal of his left foot.

The hearing officer made specific findings that the claimant "was walking on level ground" when he sustained his injury and that the injury "did not occur as a result of twisting, turning, tripping, stumbling, or any similar untoward body motion while Claimant was existing the supply closet at Employer's premises on _____." In the Background Information section the hearing officer comments that "[o]ther than pivoting on his left foot in order to turn around the door in question, Claimant was unable to recall any specific incident, such as stumbling or tripping, which could have contributed to the fracture. . . ." In the Discussion section, the hearing officer comments that "[i]t does not appear that the pivoting action which Claimant described was anything more significant than would have been necessary to turn a corner; it did not constitute any sort of tripping, twisting, or stumbling type of activity," distinguishing Texas Workers' Compensation Commission Appeal No. 033142, decided January 16, 2004. The question we address is whether pivoting (which the hearing officer inferentially found) is a sufficient distinction from the "simply walking" cases. We hold it is.

Appeal No. 033142, *supra*, cited by the claimant at the CCH, involved a prison guard that "rolled" his ankle walking down a hall. That is a clearly distinguishable case from the one before us. Also cited by the self-insured, as a distinguishable case is Texas Workers' Compensation Commission Appeal No. 040437 decided April 8, 2004, a case where the injured employee's duties required the employee to step on a step and "put tension on the machine." We agree that is distinguishable on the facts.

A factually much more similar case is Texas Workers' Compensation Commission Appeal No. 960307, decided March 25, 1996, where the claimant, a chef "was carrying tomatoes back to the storage room, he 'pivoted' on the ball of his right foot and felt something 'pop'." The chef was diagnosed as having a stress fracture of the right fourth and fifth metatarsal. The hearing officer, in that case, found the injury compensable and the Appeals Panel stated "whether the fracture occurred as a result of the pivoting action, or as a result of continuous walking both at work and away from work, was a question of fact for the hearing officer to decide." In the instant case, we read the hearing officer as saying that the claimant pivoted on his left foot but that "did not constitute any sort of tripping, twisting, or stumbling type of activity."

The self-insured, at the CCH, cited Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998, which was a case where an x-ray technician "was walking down the hall, she turned a corner by the receptionist desk and her right knee 'popped' and gave way and she felt immediate severe pain. . . ." The carrier, in that case, defended on the ground that the claimant "was merely walking [and] there was no evidence of any defect on the floor. . . ." The hearing officer, in that case, found the injury compensable and the Appeals Panel reversed and rendered a new decision that the injury was not compensable. The Appeals Panel concluded:

> In the case we consider, there was no evidence of any instrumentality of the workplace involved in the claimant's injury nor was there evidence of twisting, turning, or bending or other untoward body motion while claimant was walking down the hall. The evidence showed that claimant was simply walking down when her knee popped and she experienced severe pain. There was no nexus to the employment other than the fact that the incident occurred on the employer's premises and we do not regard injury from any, and all types of body motion on an employer's premises to be, *per se*, caused by the employment. In our review, the hearing officer's determination that the claimant sustained a knee injury in the course and scope of her employment is against the great weight and preponderance of the evidence (In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951)) because the evidence failed to establish the requisite causation which must be shown for all compensable injuries be they discreet accidental injuries or occupational disease injuries.

We would first note that Texas Workers' Compensation Commission Appeal No. 980631, *supra*, had a vigorous dissent. Otherwise, we note that Appeal No. 980631, was addressed in Texas Workers' Compensation Commission Appeal No. 982796, decided January 14, 1999. Appeal No. 982796, *supra*, involved an aircraft technician who was returning to his work station when "he turned and pivoted to his left, his knee 'locked up'." The claimant, in that case, contended the injury "did not occur during 'mere' walking, but when the claimant pivoted while performing his work duties." The hearing officer, in that case, found the injury compensable and the Appeals Panel affirmed. The Appeals Panel stated:

> We open our discussion by making the important point that the Appeals Panel has never laid down, as a rule of thumb, a doctrine that injuries that occur while a person is walking are not compensable *per se*. While we have noted that claims of repetitive trauma through ordinary walking around the workplace can generally be held not to expose a worker to any great[er] hazards at his workplace than encountered by the public in general (or by that worker away from the workplace), Appeal No. 980631, *supra*, is virtually isolated insofar as it makes a similar holding for a discreet injury. The decision in that case was neither unanimous nor did it establish broad doctrine and it is important not to read that case well beyond its facts; as the hearing officer in this case points out, that case specifically noted the lack of any evidence of any turning or twisting motion which the record in this case does contain.

As the Appeals Panel held in Texas Workers' Compensation Commission Appeal No. 972427, decided January 7, 1998, a case where the worker turned to go to a storage area and his knee "gave way," the nexus of employment is sufficiently established by testimony that he was going to check on his next work project.

In the instant case, while the hearing officer does make specific findings that there was no twisting, tripping, stumbling or "similar untoward body motion" she also impliedly finds that the claimant pivoted on his left foot but that the pivoting did not constitute tripping, twisting or stumbling activity. We might agree that pivoting does not constitute tripping, twisting or stumbling but by the same token we hold that pivoting "to turn around the door in question" is such an activity which takes it out of the realm of "merely walking."

We further note that our holding in this case is consistent with the doctrine of liberal interpretation of the 1989 Act. *See* Albertson's Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999); City of Del Rio v. Contreras, 900 S.W.2d 809 (Tex. App.-San Antonio 1995, writ denied).

The parties agreed on the record that if the hearing officer found a compensable injury, the period of disability would be from April 6 through August 9, 2004 (the claimant returned to work on August 10, 2004).

Accordingly, we reverse the hearing officer's determination that the claimant did not sustain a compensable injury on _____, and render a new decision that the claimant did sustain a compensable injury on _____, and that the claimant had disability from April 6 to August 9, 2004.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge